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IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court
of Appeals for the Eighth Circuit

Motion and Brief Amicus Curiae of the Covelo Indian
Community of the Round Valley Reservation in
Support of the Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth
Circuit

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**Motion of Covelo Indian Community for Leave to File
Brief Amicus Curiae in Support of Petition for Certiorari**

The Covelo Indian Community of the Round Valley Reservation, as *amicus curiae*, moves for leave to file the attached brief in support of the Petition for Certiorari. The Rosebud Sioux Tribe has consented to filing the brief; respondents have not consented.

During the 1850's the United States removed California Indians for their protection to collection points throughout the State because of an influx of settlers seeking gold and land. Round Valley was one such repository. Today the Covelo Indian Community derives its membership from diverse ethnic stocks whose aboriginal domains once encompassed a great

part of Northern California: Yuki (native to Round Valley), Pomo, Wailacki, Nomelacki, Concow, Wintun, and Pitt River. The Round Valley Reservation is a last foothold for these groups, who are represented by amicus—a federally recognized tribal community organized under the Wheeler-Howard Act of 1934 (25 U.S.C. § 476).

Amicus has a keen interest in the outcome of this case. In order to protect the right of its members to hunt and fish within the Reservation's 1873 boundaries free of State interference, it has intervened as plaintiff in *Russ v. Wilkins*,¹ a suit pending before the United States District Court in San Francisco. In its defense in that action, California asserts that acts of Congress approved in 1890 and 1905 worked a reduction of the Reservation's boundaries. There is a degree of similarity between these statutes and the acts construed by the Eighth Circuit Court of Appeals in *Rosebud Sioux Tribe v. Kneip*, 521 F.2d 87 (1975). The decision below thus may have a harmful impact upon the Round Valley Community.

Amicus wishes to tell the Court why it is important to the Indians of Round Valley that the writ be allowed.

Respectfully submitted,

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January, 1976

¹ Action No. C-73-2279 CBR (U.S. Dist. Ct., N.D. Cal.).

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**Brief of Covelo Indian Community of the Round Valley
Reservation as Amicus Curiae in support of the
Petition for Certiorari**

INTEREST OF AMICUS CURIAE

The interest of *amicus curiae* is set forth in the attached Motion.

STATEMENT OF THE CASE

Amicus adopts the statement set forth in the Petition.

Two decisions of this Court, rendered a decade apart, have had great impact in the field of Indian law. In *Mattz v. Arnett*, 412 U.S. 481 (1973) and *Seymour v.*

Superintendent, 368 U.S. 351 (1962), the Court held that statutes opening reservations to non-Indian settlement were completely consistent with continued reservation status absent a Congressional intent to terminate "expressed on the face of the Act or . . . clear from the surrounding circumstances and legislative history." *Mattz v. Arnett*, *supra*, 412 U.S. at 505. In reliance on one or both of these precedents, lower federal courts have upheld the integrity of reservation boundaries in the face of a variety of "surplus land" or "diminishment" acts. See, *United States v. Washington*, 496 F.2d 620 (9th Cir. 1974) (Puyallup Reservation); *United States ex rel. Condon v. Erickson*, 478 F.2d 684 (8th Cir. 1973) (Cheyenne River Reservation); *City of New Town, North Dakota v. United States*, 454 F.2d 121 (8th Cir. 1972) (Fort Berthold Reservation).

Last term, this Court for the first time in many years found unmistakable Congressional intent to terminate a reservation. *DeCoteau v. District County Court*, 420 U.S. 425 (1975). The case involved a Congressionally-ratified cession agreement under which all unallotted lands of the Lake Traverse Reservation were ceded by the Sisseton-Wahpeton Tribe to the United States in exchange for \$2.50 per acre. The Court held that "exclusive tribal and federal jurisdiction", therefore, was "limited to the retained allotments". (420 U.S. at 446). However, it was most careful to point out that it "adhere[d] without qualification to both the holding and reasoning" of *Mattz* and *Seymour*. (*Id.*) And it made careful analysis of the distinctions existing between the Lake Traverse agreement and the acts construed in the two earlier cases. This analysis now provides ascertainable standards for use in determining whether a reservation

remains intact or whether Congress clearly intended to work a diminishment.

The Eighth Circuit has now decreed the disestablishment of large portions of the Rosebud and Pine Ridge Sioux Reservation, and has done so without following the lines of distinction expressly enunciated in *De Coteau*, *supra*. *Rosebud Sioux Tribe v. Kneip*, 521 F.2d 87 (1975); *United States ex rel Cook v. Parkinson*, No. 75-1306 (decided October 29, 1975), petition for certiorari docketed December 8, 1975, Docket No. 75-5867. Amicus suggests that these cases, if left unreviewed, will seriously undermine the body of "diminishment" law that has slowly grown since *Seymour*. They will cast a pall upon attempts by the Covelo Indian Community and other tribes to establish workable programs for law enforcement and resource management on their reservations. They will be used against the Covelo Indian Community in its attempt to confirm the undiminished character of the Round Valley Reservation.

II.

The Round Valley Reservation was first created by secretarial order in 1858, and encompassed the whole of the Valley from which it takes its name. Its existence was legitimized by Congressional act and presidential executive order.¹

Shortly after the Valley was first set apart, squatters took over a goodly part of its arable lands, asserting questionable claims under the Swamp Land Act of

¹ Act of April 8, 1864, c. 48, 13 Stat. 39; Executive Order of March 30, 1870, 8 ~~Kappler~~ 828 (1913); *Mattz v. Arnett*, *supra*, 412 U.S. at 493.

1 ~~Kappler~~ 828 (1901)

1850.² In light of this forceful pressure for land, Congress worked a compromise through the Act of March 3, 1873, c. 333, 17 Stat. 633, by specifically restoring the Southern two-thirds of the Valley to the public domain and greatly expanding the Reservation's boundaries to the North, East and West, into a primarily mountainous region, so that the new boundaries encompassed 103,000 acres. However, this compromise was not enough and settlers continued to press claims within the newly-defined Reservation. By the Act of October 1, 1890, c. 1271, 26 Stat. 658, Congress directed that the Reservation be surveyed into allotments and that the surplus lands be opened for sale to settlers. The 1890 Act also required that the Reservation "as at present existing" be surveyed into 640 acre tracts, and that the line between the lands reserved for allotment and the opened lands be run and properly marked. The Indians were not paid a lump sum for the areas thus sold. Rather, the Act directed that the sale proceeds be placed in the treasury "to the credit of" the Round Valley Indians. Following the opening of the Reservation, the lands sold quite slowly and, to remedy this situation, Congress passed the Act of February 8, 1905, c. 553, 33 Stat. 706, which authorized the sale of Round Valley lands in 160 acre, rather than 640 acre, parcels. In neither the 1890 nor the 1905 Acts was there any attempt at negotiation with the Indians of the Reservation. They were passed unilaterally, and neither provided for the restoration of any lands to the public domain.

III.

In *DeCoteau* this Court pointed to factual distinctions between the cession agreement before it and the

² Act of September 28, 1850, c. 84, 9 Stat. 519.

Mattz and Seymour acts. (420 U.S. at 488). Many of the same factors distinguish the Rosebud and Round Valley legislation from the *DeCoteau* agreement:

1. Round Valley and Rosebud were both opened by unilateral act of Congress rather than by ratification of a previously negotiated agreement. (The 1904 "ratification" of the earlier agreement negotiated with the Rosebud Tribe really constituted a rejection of that agreement through change of material terms to the contract).

2. Round Valley and Rosebud were not given a sum certain for their opened lands. In both cases the legislation merely provided that "uncertain future proceeds of settler purchases should be applied to the Indians' benefit". (420 U.S. at 488).

3. In both the case of Round Valley³ and the Rosebud Reservation,⁴ Congress had previously made restorations to the public domain in express terms, and failed to use such restoration language in the later enactments which opened these reservations for settlement.

Amicus suggests that the Eighth Circuit failed to apply the mode of analysis used by this Court in *DeCoteau*. While substantial differences exist between the Rosebud and the Round Valley experiences, amicus fears that the decision below, unless reviewed and reversed, will have an unsettling effect on this already complex area of law and will harm its own chances for success in the litigation which it has undertaken in reliance on *Mattz and Seymour*.

³ Act of March 3, 1873, c. 333, 17 Stat. 633.

⁴ Act of March 2, 1889, c. 405, 25 Stat. 888.

CONCLUSION

If the approach taken by the Eighth Circuit is allowed to stand it will adversely affect Indians on many reservations. Therefore, certiorari should be granted.

Respectfully submitted,

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